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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HICHAM ABOUTAAM,

Plaintiff,

v.

18 Civ. 8995 (ALC)

AHMAD E. ASSAAD  
and PRIDE INVESTS SAL,

Defendants.

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New York, N.Y.  
May 20, 2019  
2:15 p.m.

Before:

HON. ANDREW L. CARTER

District Judge

APPEARANCES

EMERY CELLI BRINCKERHOFF & ABADY LLP

Attorneys for Plaintiff

BY: RICHARD EMERY

ANDREW WILSON

FERBER CHAN ESSNER & COLLIER LLP

Attorneys for Defendants

BY: ROBERT KAPLAN

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1 (Case called)

2 (In open court)

3 MR. WILSON: Good afternoon, your Honor. My name is  
4 Andrew Wilson of the law firm Emery Celli Brinckerhoff & Abady  
5 for the plaintiff. I'm here with my partner Richard Emery.

6 THE COURT: And for the defendant?

7 MR. KAPLAN: Robert Kaplan of Ferber Chan Essner &  
8 Coller, LLP for the defendant.

9 THE COURT: OK, good afternoon. We're here for a  
10 premotion conference. I have seen the parties' submissions.

11 My first question is have there been any settlement  
12 discussions between the parties? I know according to the  
13 plaintiff's complaint there is a previous settlement agreement,  
14 or discussion, or understanding regarding the real estate  
15 investments, but since this litigation has started have there  
16 been any further settlement discussions between the parties?

17 MR. WILSON: No, your Honor.

18 THE COURT: OK. And is there a reason for that? I'm  
19 just trying to get a sense as to why that's the case.

20 MR. WILSON: Your Honor, we're open to having that  
21 conversation. I think the reason that we're here today is  
22 because of a break-down in communication. There was what we  
23 understood to be a settlement of these parties' disputes, and  
24 then communication completely ceased, and so we were compelled  
25 to bring suit to try to avail our client of his rights here.

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1 But certainly the beginning and middle of this case has  
2 certainly been about settlement.

3 THE COURT: All right. Defense counsel?

4 MR. KAPLAN: I really have nothing to add on the  
5 subject, your Honor. I know that since this action has  
6 commenced there has not been any communication between the  
7 parties.

8 THE COURT: And do you think that your client would be  
9 interested in settling this matter? Without getting into  
10 numbers or anything. I guess what I'm wondering is this. It  
11 seems to me at one point there was at least a business  
12 relationship between these two individuals, and that seems to  
13 have soured.

14 Before this litigation continues -- because litigation  
15 is a process that doesn't tend to draw people closer  
16 together -- and before this heats up even more, it might be  
17 worth exploring the possibility of settlement. Let me just  
18 find out from defense counsel if you think your client might be  
19 interested in that possibility.

20 MR. KAPLAN: Well, your Honor, without getting into it  
21 in any depth, I can only say that our communications with our  
22 clients, they have not really evidenced any interest in a  
23 settlement.

24 THE COURT: OK. Let me get a sense from plaintiff's  
25 counsel. I didn't see it in the complaint. I know that one of

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1 the defendant's contention is that this needs to be in the  
2 complaint. Without getting into whether or not this is a  
3 necessary element of the complaint, what is the amount of money  
4 that was allegedly contributed to this charity that we're  
5 talking about here?

6 MR. WILSON: It's \$30,000, your Honor, and it is in  
7 the complaint, it's in paragraph 21, I believe.

8 THE COURT: All right. So it's \$30,000 for the  
9 charity, \$800,000 for this settlement agreement, and what else  
10 are we looking at here?

11 MR. WILSON: Well, the third category of claims  
12 relates to expenses for this real estate business, purporting  
13 to sell real estate in the south of France. Mr. Aboutaam was  
14 the individual in New York who set up the real estate, the  
15 commercial space that they occupied, and he has continued to  
16 pay amounts on that to about \$5,000 a month. So when we filed  
17 the complaint, it was around \$25,000, and that has continued to  
18 accrue.

19 THE COURT: And tell me more about this last issue  
20 here with this rental fee, this lease agreement. What's going  
21 on here? Why is this continuing to accrue?

22 MR. WILSON: Well, Pride Invests was a company that  
23 was created as an agreement between these two parties, with the  
24 promise of selling land that Mr. Assaad said he owned in the  
25 south of France. And in order to have a platform to do that

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1 the parties agreed to rent commercial real estate in New  
2 York -- I think it's on the Upper East Side -- where they have  
3 a space where they could meet with clients and show diagrams,  
4 etcetera for this real estate project. And Mr. Al Assaad said  
5 they would split the expenses evenly, and Mr. Aboutaam has  
6 invested the amount, and the entities signed the lease in New  
7 York, and Mr. Al Assaad never contributed anything to that. So  
8 the amount of outstanding -- Mr. Al Assaad's share of the lease  
9 is about \$25,000.

10 THE COURT: And what's going on with that space  
11 currently?

12 MR. WILSON: I think in the last three or four months  
13 I believe that rent has ceased being paid, and I don't know  
14 whether they are in default and therefore being evicted or  
15 whether there has been any discussions with the landlord.

16 THE COURT: OK. Defense counsel, do you have any  
17 information on that?

18 MR. KAPLAN: None, your Honor. On that lease issue?

19 THE COURT: Yes.

20 MR. KAPLAN: No, I don't. I did just want to chime in  
21 on the plaintiff's allegations as to his damages in the first  
22 cause of action.

23 THE COURT: OK.

24 MR. KAPLAN: Quoting from paragraph 21 of the amended  
25 complaint, "Mr. Aboutaam made contributions of his own to SNG

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1 that exceeded \$30,000 in both direct donations and the donation  
2 of artwork for auction at the Yale Club on May 21, 2014."

3 And if you look at the first cause of the pleadings  
4 under the first cause of action, as well as the ad damnum  
5 clause, they allege damages in an amount to be determined on  
6 the first cause of action.

7 THE COURT: Right. OK. And, plaintiffs, do you have  
8 anything to add on that? Because that was my understanding as  
9 well, that it wasn't a set amount that was listed in the  
10 complaint but that it exceeded \$30,000. But are you saying  
11 that the amount is approximately \$30,000 as opposed to just  
12 simply exceeding \$30,000?

13 MR. WILSON: Yes, your Honor. The nature of this  
14 contribution was that Mr. Al Assaad gave his time to set up  
15 these events. He contributed money. He contributed art to try  
16 to support the charity.

17 I'm sorry. Our client, the plaintiff, contributed his  
18 own time, effort, funds, and so we identified \$30,000 as the  
19 approximate amount, but the reason we say it's to be determined  
20 at trial is because the trier of fact could determine the value  
21 of Mr. Aboutaam's time as, you know, greater or less than that,  
22 but the hard contribution in terms of cash and art is  
23 approximately 30,000.

24 THE COURT: OK. Let's just go off the record for a  
25 second and just talk about settlement briefly, if counsel are

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1 OK with that. Does that work for plaintiff and defendant?

2 MR. WILSON: Yes, your Honor.

3 MR. KAPLAN: Sure, your Honor.

4 THE COURT: OK. Let's go off the record.

5 (Discussion held off the record)

6 THE COURT: Back on the record. We had an  
7 off-the-record discussion about settlement. I encouraged the  
8 parties to go down that path. Here is what we will do. I will  
9 refer this matter to Magistrate Judge Netburn for general  
10 pretrial supervision, including settlement, and I'd ask the  
11 parties to reach out to Judge Netburn's chambers, set up an  
12 initial conference, or set up probably even before that perhaps  
13 a settlement conference. And I'd ask the parties to give me a  
14 joint status report in 60 days. In that status report, let me  
15 know whether or not the parties have settled. If the parties  
16 haven't settled, or the parties want more time to go down the  
17 path of settlement, let me know that, and, if not, give me a  
18 proposed briefing schedule on the defendant's anticipated  
19 motions to dismiss.

20 So, 60 days from now would be when, Tara?

21 DEPUTY COURT CLERK: It's going to be the 22nd of  
22 July.

23 THE COURT: July 22.

24 THE COURT: Anything else from plaintiff's counsel.

25 MR. WILSON: No, your Honor.

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1 MR. KAPLAN: No, your Honor.

2 THE COURT: OK, we are adjourned. Thank you.

3 (Adjourned)

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